

# Auditor of the Court of Session

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MD v AB

EDINBURGH. 10th January 2002.

At the diet of taxation on 29th October 2001, the Auditor considered the following matters:

- A. Travel. The fees allowable are prescribed by the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (the "Civil Fees Regulations") regulation 4 which provides that "a solicitor shall be allowed such fees and outlays as are reasonable for conducting the proceedings in a proper manner, as between solicitor and client, third party paying." The Auditor refers to Lord Kylachy in *Hood v. Gordon 1896 23R.675*: "I see no reason to doubt that the principle which we must follow in this case is that established in the case of *Walker v. Waterlow*, and also in the case of *Wigtown Burghs*. That principle is, that while the taxation as prescribed by the statute be as between agent and client, yet as the expenses in a case like this have to be paid not by the client but by a third party, the principle of taxation, though not indeed identical with that between party and party, must yet be different from that applied in the ordinary case of agent and client." Then Lord McLaren's opinion states, "when a statute authorises the taxation of expenses, as between agent and client, what is given is the expenses which a prudent man of business, without special instructions from his client, would incur in the knowledge that his account would be taxed." It is the Auditor's experience that in detailed party and party accounts no objection is taken by the Paying/

The Auditor  
Neil J. Crichton, W.S.

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Paying Party to charges for travelling incurred by the opponent. The standard of taxation here and in Agent and Client Accounts is less strict and it follows, therefore, that agents are, in general terms, accepting travelling expenses as those "which the prudent man of business, without special instructions from his client, would incur in the knowledge that this account would be taxed." In these circumstances, the Auditor is prepared to allow the travelling expenses incurred in this case.

- B. Additional Fee. The Additional Fee was awarded by the Court in terms of the Interlocutor of 29th June 2001. This is dealt with in a separate Report annexed hereto.

*M. J. Linton*

AUDITOR OF THE COURT OF SESSION